IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 183 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONR OF INCOME-TAX

Versus

RAJESH TEA CO.,

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for
Applicant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1984-85 :

"Whether, Appellate Tribunal is right in law and on facts in deleting the addition made by the

I.T.O. invoking the provisions of section 43-B for the amount of Rs.2,27,544/-being unpaid sales-tax ?"

2 We have heard Mr.B.B.Nayak, learned Counsel for the revenue. Though served none appears for the respondent-assessee.

3 We have heard the learned Counsel for the revenue and have perused the finding given by the Tribunal that the assessee had not only deposited the amount within statutory time limit but the amount had been deposited before the due date for furnishing the return of income. Our attention has been invited to the decision of the Apex Court in the case of Allied Motors (P) Ltd. vs. C.I.T.224 ITR 677. Having heard learned Counsel for the revenue and having perused the aforesaid decision we are of the view that the principle laid down by the Apex Court in the aforesaid decision (which is in favour of the assessee and against the revenue) is squarely applicable to the facts of this case.

4 Accordingly our answer to the question referred to us is in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)
m.m.bhatt